THE REPORT OF THE MEMBERS OF THE STATE BOARD OF HEALTH ON THE PROPOSAL FOR A CHANGE IN SCOPE OF PRACTICE BY LICENSED MENTAL HEALTH PRACTITIONERS (May 16, 2005)

The Recommendations of the Members of the Board's Credentialing Review Committee on the Proposal

Comments by the Chairperson of the Technical Review Committee

During the May 3, 2005 review of the proposal by the committee, Dr. Ihle introduced Dr. Spry, the chairperson of the LMHP Technical Review Committee, for his comments on the review of his committee. Dr. Spry briefly oriented the other Board members to the history of LMHP, and then briefly described the original LMHP proposal. Dr. Spry then identified the key issues raised during the review including the role of Medicaid rules and regulations in LMHP practice, the discussions about nationally accredited programs versus non-nationally accredited programs, the importance of the codes of ethics of the various LMHP member professions, and the various amendments that have been made to the original proposal since the beginning of the review. Dr. Spry stated that the focus of the amendments was the so-called "like groups" that are part of the professional counselor profession. He went on to clarify that the members of these "like groups" consist of persons who are graduates of programs that lack national accreditation, and that the technical committee was concerned about the fact that the original proposal would have included them under the new proposed scope without any additional requirements. He stated that the committee was concerned that there was significant risk of new harm to the public from the inclusion of these groups in the proposal without requiring that they get additional education and training. He added that all of the amendments submitted dealt primarily with this issue.

Testimony from Interested Parties

Dr. Ihle then asked the representatives of the LMHP applicant group to come forward to present their comments. Kevin Kaminski, Elisa Linscott, and Lindy Bixler (all LMHPs) came forward to testify. These testifiers presented the following document, which outlined their latest changes to date on their proposal to the members of the technical committee:

Revised LMHP Proposal for the Board of Health Review Process

(1) Provisional Licensed Mental Health Practitioner (PLMHP):

- Applicants who graduate from a nationally accredited professional program (CACREP, COAMFTE, CSWE, or APA) or a non-accredited national professional program must complete 3000 hours of documented supervised experience within a minimum of 2 years and a maximum of 5 years. The documented supervision will evidence the practitioner has received training to diagnose and treat clients identified as MMDs. Documentation of supervision will include all client diagnoses, with a minimum of 50% of client contact hours being with clients diagnosed under the MMD category. Supervision will be provided by a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner.
- Applicants who do not wish to obtain full, independent licensure (LIMHP) do not need to meet the minimum 50% of client contact hours with clients diagnosed under the MMD category during the supervisory period.

(2) Licensed Mental Health Practitioner

This level will apply to those who do not wish to obtain or are not qualified to be at the independent licensure level and will operate the same as the current LMHP statutes with

the consultation requirements for treating clients with MMDs. Licensed Mental Health Practitioner applicants may additionally apply to be a Licensed Marriage and Family Therapist, Licensed Professional Counselor, or Licensed Certified Social Worker, which will operate the same as the current statutes.

(3) Licensed Independent Mental Health Practitioner (LIMHP)

- Applicants who graduate from a nationally accredited professional program (CACREP, COAMFTE, CSWE, and APA) and complete within a minimum 2 years and a maximum of 5 years, 3000 hours of documented supervised experience are eligible to apply for full and independent licensure as a Licensed Independent Mental Health Practitioner and one of the following three categories: Licensed Independent Marriage and Family Therapist, Licensed Independent Clinical Social Worker and Licensed Independent Professional Counselor.
- Applicants who graduate from a program that is not nationally professionally accredited by CACREP, COAMFTE, CSWE, or APA can apply for full, independent licensure as a Licensed Independent Mental Health Practitioner upon completion of 7000 hours and 10 years of documented supervision. This documented supervision will evidence the practitioner has received training to diagnose and treat clients identified as MMDs. Documentation of supervision will include all client diagnoses with a minimum of 50% of client contact hours being with clients diagnosed under the MMD category. Supervision will be provided from a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner.

(4) Grand-parenting:

- All LMHPs who graduated from nationally professionally accredited programs on or before July 1, 2004 will be eligible for full licensure on July 1, 2006.
- LMHPs who graduated from non-nationally accredited professional programs before July 1, 1996 will be eligible for full licensure on July 1, 2006. All LMHPs who graduate after July 1, 1996 will be eligible for full licensure after completion of 10 years and 7,000 hours of documented supervision. This documented supervision will evidence the practitioner has received training to diagnose and treat clients identified as MMDs. Documentation of supervision will include all client diagnoses with a minimum of 50% of client contact hours being with clients diagnosed under the MMD category. Supervision will be provided from a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner.

(5) Continuing Education: Requirement that 6 of the 32 hours be specific to diagnostics.

Lindy Bixler commented that this amendment creates a tiered credentialing process in which those who want to diagnose and treat MMDs independently must meet a specific standard and become credentialed as LIMHPs, whereas other practitioners who do not seek to do this would remain LMHPs and continue to practice as they do now. Kevin Kaminski commented that the training provisions of this amendment are based upon standards developed by the National Council of Counseling Programs.

Dr. Spry commented that this amendment represents a major improvement in the proposal, and that it goes a long way toward addressing the concerns raised by the technical review committee during their review process. Mr. Kaminski commented that these provisions exceed the educational and training standards that are required in other states that allow independent practice for the diagnosis and treatment of MMDs.

Dr. Discoe asked the applicants whether these educational and training provisions were all post-graduate. Mr. Kaminski responded in the affirmative. He added that there are strict guidelines as to where practitioners can do their post-graduate work.

Dr. Sandstrom asked the applicants to comment on the training in the amended proposal pertinent to non-accredited practitioners. Mr. Kaminski commented that this aspect of the proposal represents the thinking of the National Council of Counseling Programs regarding how best to bring the so-called "like groups" up to the standards of nationally accredited programs. Dr. Sandstrom asked Mr. Kaminski whether candidates who undergo such training programs are in some way required to demonstrate competency as part of the training process. Mr. Kaminski responded in the affirmative.

Dr. Spry asked the applicants about the meaning of the expression "full licensure" in the context of the amended language, and in doing so commented that this language is confusing. He went on to state that there cannot be degrees of licensure, only degrees of independence. Lindy Bixler responded that there is a need to further fine-tune the wording of the amendment. Dr. Spry stated the amendment's wording has confused the idea of independence with licensure per se, and that the applicants need to revise the wording so as to account for the distinctive meanings of these two terms. The applicants indicated that they would so revise the wording.

Dr. Sandstrom expressed concern about a comment attributed to the applicant group that was described on page 12 of the technical committee's Final Report. This comment expressed the applicant groups' frustration with the current restrictions on their practice, in particular the requirement for consultation with other practitioners regardless of a patient's condition or problem. Dr. Sandstrom stated that this comment seems to indicate an attitude among the applicants that is perhaps not as sensitive as it could be regarding the vulnerabilities of patients with serious mental health problems, and asked the applicants to clarify this comment for the Board members. Lindy Bixler responded that the comment in question needs to be understood in the context of current Medicaid rules and regulations that require LMHPs to consult with a specific practitioner on each and every case regardless of the diagnosis. Dr. Spry then commented that this rule is very restrictive, and seems unrelated to anything necessary to protect the public from harm. Lindy Bixler commented that the applicant group would like to see a circumstance wherein the decision to consult or not consult is left to LMHP practitioners, and that they be guided by the concept of "best practices" rather than by some arbitrary rule or regulation being imposed on them. Kevin Kaminski added that there is no good reason why the professional judgement of LMHPs should not be trusted when there is a question of whether or not to consult in a particular case. He went on to state that other mental health professionals are trusted this way, why not LMHPs?

Dr. Sandstrom then commented that the documentation of experience is so vital in this area of care because of the vulnerability of this population, and that the applicants need to do this in the same manner as psychologists and physicians. The applicants responded that their amendment provides for documentation of experience with MMDs, and would require documentation to show that 50 percent of their work is in the area of MMDs. Elisa Linscott commented that this exceeds the standard of psychology, which does not have to document in this manner. Mario Scalora, Ph.D., speaking on behalf of the Nebraska Psychological Association, responded that psychologists also are required to document their hours of experience with MMDs.

Dr. Sandstrom asked the applicants what could be done in the long run to address the problem of non-accredited providers. Lindy Bixler commented that the programs from which these provider's graduate must be brought up to standard vis-à-vis the clinical, "on-site" aspects of education and training. Kevin Kaminski commented that the National Council of Counseling

Programs has defined standards that can be used to assist graduates to satisfy national standards, and the amended language reflects this effort.

There being no further comments or questions pertinent to applicant group testimony, Dr. Ihle asked whether there were representatives of other interested groups present that would like to testify regarding the proposal. Mario Scalora, Ph.D., came forward to testify on behalf of the Nebraska Psychological Association. Dr. Scalora stated that, at a minimum, 4000 hours of documented supervised experience would be needed for the applicants to diagnose and treat MMDs independently. Dr. Scalora stated that all who wish to do this should also be graduates of accredited programs. Dr. Scalora also stated that the supervision provision included in the latest amended version of the proposal needs further clarification as to the exact nature of this supervision. This testifier commented that grand-parenting LMHPs as regards the services in question does not serve the public interest.

Dr. Scalora stated that his Association continues to oppose the proposal as amended. He stated that the applicant group has not adequately explored the nature or the level of degree-related training in diagnosing MMDs necessary to safely and effectively serve the public. He concluded his prepared remarks by stating that the great diversity of educational and training programs in LMHP, and the fact that the proposal allows graduates of unaccredited programs to be included under the proposal, raises concerns about public safety and the quality of care.

Dr. Spry asked Dr. Scalora whether he perceives significant differences between masters level practitioners and doctoral level practitioners in the quality of services in the area of MMDs. Dr. Scalora responded in the affirmative, and stated that the doctoral level practitioner can deal with a much wider range of mental illnesses than can masters level practitioners.

Dr. Sandstrom asked Dr. Scalora whether he has any information regarding error rates pertinent to LMHP diagnoses of MMDs. He responded that what information he has indicates an approximate error rate of 10 percent to 15 percent, but that he does not know if this is typical across the nation.

Dr. Sandstrom asked Dr. Scalora whether he sees any potential harm to the public in the delays in getting access to care that the applicant group has described. Dr. Scalora responded by stating that he believes that Medicaid rules and regulations are the real issues regarding access to care problems and not the current state statutory requirements per se. Pertinent to applicant comments regarding lack of communication from psychologists pertinent to requests for consultation and referral, he stated that what information he has gathered does not indicate that psychologists are receiving very many requests of this nature, and that this is an aspect of the access issue that the applicants may be exaggerating.

This ended the testimony of Dr. Scalora and the public testimony component of the meeting as well.

Committee Discussion on the Issues Raised by the Proposal

Dr. Sandstrom expressed concern that there is a grand-parenting clause in the latest version of the proposal, and suggested that this could be a stumbling block for approval for him.

Dr. Discoe stated that the continuing education provision needs to clarify who would be providing these units and in what context, and then asked, exactly what would be covered?

The Board's committee members then asked the applicants to clarify the following in their amended proposal:

1) The distinction between licensure and independent practice
2) The consistency of terminology pertinent to accredited and non-accredited programs
3) Clarify the hours and content of the CE units
4) Clarify the meaning and purpose of the grandfather clause

The applicants indicated that they would make these clarifications in advance of the May 16, 2005 Board of Health meeting.

The Formulation of Committee Recommendations on the Proposal

At this juncture in the review, the Board members indicated that they were ready to begin taking up the four criteria of the review program. Mr. Briel clarified that they must first decide whether or not to adopt the latest amended version of the proposal. The Board members decided to adopt it by acclamation.

The Board members then took up each of the four criteria, beginning with criterion one, which asks whether there is significant harm or significant potential for harm to the public under the current practice situation of the profession under review. Dr. Spry moved and Dr. Ihle seconded that the proposal satisfies the first criterion. Voting aye were Spry, Ihle, Discoe, Sandstrom, and Nelson. There were no nay votes or abstentions.

Dr. Ihle then moved and Dr. Spry seconded that the proposal satisfies the second criterion, which asks whether there is significant potential for new harm to the public health and welfare inherent in the applicants' proposal. Before voting on this criterion Dr. Spry indicated to the applicant group that the grand-parenting clause should be deleted since there is potential therein for unqualified persons to be brought into the proposal. Lindy Bixler stated that the applicant group would delete this clause as part of the clarifications requested previously by the Board members. Then, the Board members voted on the second criterion. Voting aye were Spry, Ihle, Discoe, Sandstrom, and Nelson. There were no nay votes or abstentions.

Dr. Sandstrom then moved and Ms. Nelson seconded that the proposal satisfies the third criterion. This criterion asks whether there is significant benefit to the public from the applicants' proposal. Voting aye were Spry, Ihle, Discoe, Sandstrom, and Nelson. There were no nay votes or abstentions.

Ms. Nelson then moved and Dr. Ihle seconded that the proposal satisfies the fourth criterion. This criterion asks whether or not the applicants' proposal is the most cost-effective option for dealing with the problems identified by the applicant group. Voting aye were Spry, Ihle, Discoe, Sandstrom, and Nelson. There were no nay votes or abstentions.

By these four votes the Board members recommended to the members of the full Board that they approve the proposal as amended.

At this juncture Dr. Spry moved and Dr. Ihle seconded that the Board of Health write a letter to Nebraska Medicaid officials asking them to examine their rules and regulations pertinent to the oversight of LMHP services in the interest of facilitating timely access to appropriate client friendly care. The motion was approved by acclamation.

The Board's committee members at a subsequent meeting identified additional questions and concerns that need to be addressed by other review bodies and interested parties as the review process for this issue progresses:

1) How would the LMHP Board verify that candidates have satisfied the specific requirements of the proposal including the requirement that 50 percent of their client contact hours be with clients diagnosed under the MMD category?

2) How would the LMHP Board administer the credentials of those LIMHPs that do not fit the three main licensure categories of LMHP (i.e., social work, professional counseling, marriage and family therapy)? The example of masters level psychologists was cited in the discussion on this question.

3) Would there be a need to create a new committee on the LMHP Board to represent LIMHPs?

4) How can the members of the mental health community in Nebraska address the Medicaid-related regulatory issues that surround the LMHP scope of practice issue?

The Recommendations of the Full Board of Health on the Proposal

Comments by the Chairperson of the Board of Health's Credentialing Review Committee

Dr. Ihle began his comments at the meeting of the full Board of Health by summarizing the work of his Credentialing Review Committee at their May 3, 2005 meeting on the proposal. Dr. Ihle identified the specific issues that were discussed at this meeting, including the role of Medicaid, professional codes of ethics, accreditation standards and related issues, and the consistency of competency standards. Dr. Ihle commented that concerns about those LMHP practitioners who are graduates of non-nationally accredited programs was at the center of the discussion between the applicants and the committee members during this meeting. Dr. Ihle stated that during this discussion the applicants and the committee members reached an understanding regarding what additional specific training graduates of non-accredited programs would need in order to safely and effectively diagnose and treat major mental disorders. He stated that this understanding was critical to the approval of the proposal by the committee members.

Dr. Ihle then stated for the benefit of the Board members his reasons for supporting the proposal on each of the four criteria during the review of his committee. Pertinent to criterion one, he commented that the information provided during the review indicated that timely access to care is a critical issue in mental health, and that something needs to be done to improve access to this care. Pertinent to criterion two, he commented that the amendments made to the proposal regarding the training of non-nationally accredited practitioners addressed his concerns about the safety of the proposal. Pertinent to criterion three, he commented that the proposal would provide more timely access to mental health services. Pertinent to criterion four, he commented that there was no better option provided to deal with these access problems.

Dr. Ihle then asked those Board members who had been in attendance on May 3 to comment on their reasons for supporting the proposal on the four criteria. Ms. Nelson commented that her concerns about the safety of the proposal were addressed by the amendments to the proposal, and that the amended proposal seemed to her to satisfy the other three criteria as well. Dr. Spry commented that he could not have supported the original proposal without the amendments pertinent to training and contact hours. He stated that the changes made by the applicant group regarding the training of the non-nationally accredited practitioners should be sufficient to upgrade their qualifications to provide the services in question independently. Dr. Sandstrom commented that other states have moved in the direction of independent practice for masters level mental health practitioners, and that no evidence was provided during the review to indicate that there have been any problems associated with this trend. There being no other

comments from the other members of the Credentialing Review Committee, Dr. Ihle stated that he had completed his committee report.

Dr. Schiefen then asked the applicant group representatives whether they wanted to make comments to the Board members. Lindy Bixler, a Marriage and Family Therapist, came forward and briefly commented that the accreditation issue was the major hurdle that her group had to overcome throughout the review, and expressed appreciation to the members of the Board of Health as well as to the technical committee for all of their efforts in dealing with this complex issue. She commented that the latest amended version of the proposal represents the applicant group's efforts to respond to the concerns expressed by the Board's Credentialing Review Committee on May 3. The text of this version of the proposal is as follows:

Revised Licensed Mental Health Practitioners Proposal

- Applicants with the required education shall initially be licensed as a Provisional Licensed Mental Health Practitioner (PLMHP). Provisional Licensed Mental Health Practitioners shall complete 3,000 hours of documented supervised experience within a minimum of two years and a maximum of five years after their initial licensure to obtain the status of Licensed Mental Health Practitioner (LMHP). Licensed Mental Health Practitioners may additionally apply to be Licensed Marriage and Family Therapists, Licensed Professional Counselors, or Licensed Certified Social Workers, which will operate the same as the current statute.

- Applicants who graduate from nationally accredited professional programs and wish to obtain the status of a Licensed Independent Mental Health Practitioner (LIMHP) must complete 50% of their client contact hours, within the 3,000 hours of supervised experience, with clients diagnosed under the major mental disease category. Supervision must be provided by a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner.

- Applicants who have completed the required experience and client contact hours can be licensed as a LIMHP in one of the following categories: Licensed Independent Marriage and Family Therapist, Licensed Independent Clinical Social Worker, or Licensed Independent Professional Counselor.

- Applicants who graduate from a non-nationally accredited professional program can apply for licensure as a Licensed Independent Mental Health Practitioner upon completion of 7,000 hours (including the 3,000 hours of supervision as specified above) of supervised practice over a minimum of ten years, including a minimum of 50% of client contact hours with clients diagnosed under the major mental disease category. Supervision must be provided by a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner.

- Licensed Mental Health Practitioners who are licensed on the effective date of the new statute, and who wish to become a Licensed Independent Mental Health Practitioner and have graduated from a nationally-accredited professional program, shall document for the licensure board a minimum of two years and 3,000 hours of supervised experience which shall include a minimum of 50% of client contact hours with clients diagnosed under the major mental disease category.

- Licensed Mental Health Practitioners who are licensed on the effective date of the new statute, and who wish to become Licensed Independent Mental Health Practitioners, and have graduated from non-nationally accredited professional programs, shall document for the licensure board a minimum of ten years and 7,000 hours of supervised/consultation

experience which shall included a minimum of 50% of client contact hours with clients diagnosed under the major mental disease category.

- The licensure board shall accept reasonable documentation of the required experience of contact hours. Documentation may include sworn statements from employers and supervisors, as well as the applicant, but shall not in any case require the applicant to produce individual client case records.

Overview of 407 Proposal

- The PLMHP statute criterion remains the same and will include additional supervision documentation for those who choose to move to the Licensed Independent Mental Health Practitioner level. "… must complete 50% of their client contact hours, within the 3,000 hours of supervised experience, with clients diagnosed under the major mental disease category."

- The LMHP statute criterion remains the same and will include additional supervision documentation for those who choose to move to the Licensed Independent Mental Health Practitioner level.

- The Licensed Independent Mental Health Practitioner level of licensure is new and is defined within this proposal.

- Supervision and consultation criteria are currently defined in the regulations.

- It is suggested that the Mental Health Licensing Board consider including that 6 of the 32 continuing education requirements be related to MMD diagnoses for those renewing the Licensed Independent Mental Health Practitioner license.

There being no other parties expressing an interest in coming forward to present comments to the Board, Dr. Schiefen asked the Board members if they had any additional comments to make on the LMHP proposal. There being no additional comments, Dr. Schiefen asked David Montgomery how the Board members might best proceed toward taking action on the proposal. Mr. Montgomery stated that the Board members may either take action on each of the four criteria just as the Credentialing Review Committee had done on May 3, or take action via one roll call vote on the recommendations of this committee. The Board members indicated that they preferred the second of these two options. Under this option the committees report is a motion, and by rule there no need for a second to a committee motion. The roll call vote to approve the report of the Board's Credentialing Review Committee was as follows:

> Voting aye were Bieganski, Westerman, Crockett, List, Lazure, Schiefen, Sandstrom, Augustine, Nelson, Ihle, Salansky, Forney, and Spry. There were no nay votes or abstentions. By this vote, the Board members approved the action taken by their committee, which means that they approved the LMHP proposal as amended.

The Board members then took action on the issue of the Medicaid rules and regulations pertinent to LMHP practice. Dr. Spry stated that the Board of Health should write a letter to Dick Nelson, the Director of the HHS Department of Finance and Support, stating their concerns about current Medicaid rules and regulations that require each LMHP to consult with a specific psychologist or psychiatrist for each client after their client's fourth visit. Dr. Spry stated that this letter should ask Mr. Nelson to review the rules pertinent to the process for reimbursement of LMHPs for their ongoing therapy for Medicaid clients pursuant to the establishment of a policy

that is more sensitive than is the current policy to the need for timely access to mental health services and continuity of care. The Board members agreed to this suggestion by acclamation.

The Board members then discussed administrative aspects of the LMHP proposal, focusing on the need for rigorous oversight of the regulatory process pertinent to the new LIMHP credential if the proposal were to become law. Dr. Spry stated that the Board of Health should specifically admonish the members of the LMHP regulatory Board to identify ways in which the provisions in the amended LMHP proposal pertinent to MMD contact hours be documented and enforced. The Board members agreed to this suggestion by acclamation.